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FM AMEMBASSY BANDAR SERI BEGAWAN  
TO RUEHC/SECSTATE WASHDC PRIORITY 4445  
INFO RUCNASE/ASEAN MEMBER COLLECTIVE

UNCLAS SECTION 01 OF 02 BANDAR SERI BEGAWAN 000040

SENSITIVE

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SUBJECT: BANDAR SERI BEGAWAN 2009 SPECIAL 301 REVIEW - RECOMMEND STATUS CHANGE

REF: A) STATE 8410  
B) EHLER/COPPOLA/MCINTYRE EMAILS  
C) 08 BANDAR SERI BEGAWAN 69

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#### SUMMARY

1. (SBU) In response to Ref A request, Post recommends changing Brunei's current Special 301 status in 2009. After careful review of the Government of Brunei (GoB) delayed Special 301 submission, assessment of the International Intellectual Property Alliance (IIPA) recommendations, discussions per Ref B, and assessing the limited progress since the last 301 review (Ref C), post recommends Brunei be placed on the Special 301 Watch List. Video and music piracy dominate the entire, albeit small, commercial market. While there has been limited progress, especially in enforcement training and public awareness, the GoB has had limited success or sustained programs to protect Intellectual Property Rights (IPR). However, post recommends that a status review be conducted after six months. End Summary.

#### SUFFICIENT TIME GIVEN, RECOMMEND STATUS CHANGE

2. (SBU) As noted in Ref C, there has been repeated requests to give Brunei extra time to assess its ability and will to enforce Intellectual Property Rights (IPR). After three years, while there has been some progress, it is limited and not sustained. Post recommends that Brunei is placed on the Special 301 Watch List. Brunei has been given sufficient time to take credible action. Post does not/not believe placement on the Priority Watch List is appropriate. In addition, post recommends a review of Brunei's status after six months if there is improvement in IPR protection and enforcement.

#### PIRACY DOMINATES DISC MARKET BUT SOME PROGRESS

3. (SBU) Video and music piracy dominates almost the entire commercial market in Brunei. It is difficult, if not impossible, to find a retail outlet that sells IPR protected digital or music discs. Post does not believe Brunei is a major manufacturing hub but is a destination point for pirated discs. While the disc market is almost completely saturated with pirated goods, post has observed some progress in enforcement against pirated computer software. There have been police raids and seizure of pirated software.

Brunei's movie theaters prominently display anti-piracy/recording warnings. In addition, there have been arrests made for the smuggling of pirated discs. However, these arrests, mostly by Customs officials, have been as a result of larger scale smuggling operations which happened to include pirated discs.

#### COOPERATION AND TRAINING: NEXT STEPS

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14. (SBU) As noted in Ref B and in the GoB's Special 301 submission, there has been ongoing and sustained cooperation from Department, Post, USTR, DHS-Customs, USPTO, FCS, and other USG agencies with the GoB ministries. Training has been given to numerous GoB ministries (Customs, National Police, Attorney General's Chambers (AGC)) on a variety of topics, but especially focused on IPR enforcement. Ref C noted that the GoB requested additional training. These requests have and continue to be met. However, the training focus should shift to case work and prosecution, in addition to more sustained public awareness campaigns. While some ministries have demonstrated a willingness to move forward on IPR protections, others have demonstrated significant reluctance to take positive steps.

#### LEGAL FRAMEWORK AND RIGHTS HOLDERS

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15. (SBU) Prosecution has been limited by requirements that rights holders file complaints with the police and the AGC. In addition, lack of in-country representation by rights holders has been noted as a reason why the AGC and other GoB ministries have not been more active in IPR enforcement. This assertion is countered by the few companies who have in-country representation, file complaints, and still do not receive adequate enforcement. In addition, as noted in Ref C, there remains a justifiable concern that rights holders will file complaints but no action will be taken. The AGC and other GoB ministries also are legitimately concerned that they will move forward with cases but not receive rights holders support. This lack of trust by both parties can be addressed if there was more direct and open communication. Department (EAP/MTS), Embassy, and USTR have strongly urged the GoB to seek more direct contact and

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interactions with rights holders and various industry associations. The GoB could make significant progress by simply talking with industry representatives on a regular basis.

#### COMMENT: STATUS CHANGE NEEDED BUT PROGRESS CAN BE MADE

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16. (SBU) There is no question that Brunei has been given ample time and support from the USG to address IPR issues, most especially disc piracy. To date, the progress has been limited. However, there is recognition in Brunei that IPR can and must be addressed in a sustained manner. The TransPacific Partnership (TPP) provides another catalyst to encourage Brunei to move forward with increased IPR protections. Senior GoB officials recognize this, however the importance and political will to enforce IPR protections has not permeated throughout the GoB. Post concurs with Department assessment that a Special 301 Watch List placement could spur further action. Brunei will make progress on IPR issues when the highest levels of government and the business community fully support enforcement. Post believes that once these decisions are made, progress can and will be swift. If and when the demonstrated progress is made, Post encourages a status review.

TODD